

House Study Bill 182

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON SMITH)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to cigarette fire safety standards, and providing
2 penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1646YC 82
5 pf/je/5

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1 1 Section 1. NEW SECTION. 101B.1 SHORT TITLE.
1 2 This chapter shall be known and may be cited as the
1 3 "Cigarette Fire Safety Standards Act".
1 4 Sec. 2. NEW SECTION. 101B.2 DEFINITIONS.
1 5 As used in this chapter, unless the context otherwise
1 6 requires:
1 7 1. "Agent" means a distributor as defined in section
1 8 453A.1 authorized by the department of revenue to purchase and
1 9 affix stamps pursuant to section 453A.10.
1 10 2. "Cigarette" means cigarette as defined in section
1 11 453A.1.
1 12 3. "Department" means the department of public safety.
1 13 4. "Manufacturer" means manufacturer as defined in section
1 14 453A.1.
1 15 5. "Quality control and quality assurance program" means
1 16 the laboratory procedures implemented to ensure that operator
1 17 bias, systematic and nonsystematic methodological errors, and
1 18 equipment-related problems do not affect the results of the
1 19 repeatability testing.
1 20 6. "Repeatability" means the range of values within which
1 21 the repeat results of cigarette test trials from a single
1 22 laboratory will fall ninety-five percent of the time.
1 23 7. "Retailer" means retailer as defined in section 453A.1.
1 24 8. "Sale" means any transfer of title or possession,
1 25 exchange or barter, in any manner or by any means or any
1 26 agreement. In addition to cash and credit sales, the giving
1 27 of cigarettes as a sample, prize, or gift or the exchanging of
1 28 cigarettes for any consideration other than money is
1 29 considered a sale.
1 30 9. "Sell" means to sell, or to offer or agree to sell.
1 31 10. "Wholesaler" means wholesaler as defined in section
1 32 453A.1.
1 33 Sec. 3. NEW SECTION. 101B.3 GENERAL REQUIREMENTS ==
1 34 ADMINISTRATION.
1 35 1. Beginning July 1, 2008, cigarettes shall not be sold or
2 1 offered for sale to any person in this state unless:
2 2 a. The cigarettes have been tested in accordance with the
2 3 test method prescribed in section 101B.4.
2 4 b. The cigarettes meet the performance standard specified
2 5 in section 101B.4.
2 6 c. A written certification has been filed by the
2 7 manufacturer with the department and in accordance with
2 8 section 101B.5.
2 9 d. The cigarettes have been marked in accordance with
2 10 section 101B.7.
2 11 2. This chapter shall not be construed to prohibit a
2 12 wholesaler or retailer from selling the wholesaler's or
2 13 retailer's inventory of cigarettes existing prior to July 1,
2 14 2008, provided that the wholesaler or retailer is able to
2 15 establish both of the following:
2 16 a. Tax stamps were affixed to the cigarettes on inventory
2 17 pursuant to section 453A.10 before July 1, 2008.
2 18 b. The inventory of cigarettes was purchased before July

2 19 1, 2008, in comparable quantity to the amount of inventory of
2 20 cigarettes purchased during the same period of the prior year.

2 21 3. This chapter shall not be construed to prohibit any
2 22 person from selling or offering for sale cigarettes that have
2 23 not been certified by the manufacturer in accordance with
2 24 section 101B.5 if the cigarettes are or will be stamped for
2 25 sale in another state or are packaged for sale outside the
2 26 United States.

2 27 4. The department of public safety shall administer this
2 28 chapter and may adopt rules pursuant to chapter 17A to
2 29 administer this chapter.

2 30 Sec. 4. NEW SECTION. 101B.4 TEST METHOD == PERFORMANCE
2 31 STANDARD == TEST DATA.

2 32 1. a. Testing of cigarettes shall be conducted in
2 33 accordance with ASTM (American society for testing and
2 34 materials) international standard E2187=04, standard test
2 35 method for measuring the ignition strength of cigarettes.

3 1 b. The department may adopt a subsequent ASTM standard
3 2 test method for measuring the ignition strength of cigarettes
3 3 upon a finding that the subsequent method does not result in a
3 4 change in the percentage of full-length burns exhibited by any
3 5 tested cigarette when compared to the percentage of
3 6 full-length burns the same cigarette would exhibit when tested
3 7 in accordance with ASTM international standard E2187=04 and
3 8 the performance standard in this section.

3 9 2. Testing shall be conducted on ten layers of filter
3 10 paper.

3 11 3. The performance standard shall require that no more
3 12 than twenty-five percent of the cigarettes tested in a test
3 13 trial shall exhibit full-length burns.

3 14 4. Forty replicate tests shall comprise a complete test
3 15 trial for each cigarette tested.

3 16 5. The performance standard required by this section shall
3 17 only be applied to a complete test trial.

3 18 6. a. Testing shall be conducted by a laboratory that has
3 19 been accredited pursuant to international organization for
3 20 standardization/international electrotechnical commission
3 21 standard 17025 or other comparable accreditation standard
3 22 required by the state fire marshal.

3 23 b. Laboratories conducting testing in accordance with this
3 24 section shall implement a quality control and quality
3 25 assurance program that includes a procedure that will
3 26 determine the repeatability of the testing results. The
3 27 testing repeatability shall be no greater than nineteen
3 28 one-hundredths.

3 29 7. This section shall not require additional testing if
3 30 cigarettes are tested consistent with this chapter for any
3 31 other purpose.

3 32 8. Each cigarette listed in a certification submitted in
3 33 accordance with section 101B.5 that uses lowered permeability
3 34 bands in the cigarette paper to achieve compliance with the
3 35 performance standard pursuant to this section, shall have at
4 1 least two nominally identical bands on the paper surrounding
4 2 the tobacco column. At least one complete band shall be
4 3 located at least fifteen millimeters from the lighting end of
4 4 the cigarette. For cigarettes on which the bands are
4 5 positioned by design, there shall be at least two bands fully
4 6 located at least fifteen millimeters from the lighting end and
4 7 either ten millimeters from the filter end of the tobacco
4 8 column, or ten millimeters from the labeled end of the tobacco
4 9 column for nonfiltered cigarettes.

4 10 9. a. The manufacturer of a cigarette that the department
4 11 determines cannot be tested in accordance with the test method
4 12 prescribed in this section shall propose a test method and
4 13 performance standard for the cigarette to the department.
4 14 Upon approval of the proposed test method and a determination
4 15 by the department that the performance standard proposed by
4 16 the manufacturer is equivalent to the performance standard
4 17 prescribed in this section, the manufacturer may employ the
4 18 test method and performance standard to certify the cigarette
4 19 in accordance with section 101B.5.

4 20 b. If the department determines that another state has
4 21 enacted reduced cigarette ignition propensity standards that
4 22 include a test method and performance standard that are the
4 23 same as those contained in this chapter and the department
4 24 finds that the officials responsible for implementing those
4 25 requirements have approved the proposed alternative test
4 26 method and performance standard for a particular cigarette
4 27 proposed by a manufacturer as meeting the fire safety
4 28 standards of that state's law or regulation under a legal
4 29 provision comparable to this subsection, the department shall

4 30 authorize that manufacturer to employ the alternative test
4 31 method and performance standard to certify that cigarette for
4 32 sale in this state, unless the department demonstrates a
4 33 reasonable basis why the alternative test should not be
4 34 accepted under this chapter. All other applicable
4 35 requirements of this chapter shall apply to the manufacturer.

5 1 10. Data from testing conducted by a manufacturer to
5 2 comply with this section shall be maintained on file by the
5 3 manufacturer for a period of three years and shall be sent to
5 4 the department upon request and to the office of the attorney
5 5 general upon request.

5 6 Sec. 5. NEW SECTION. 101B.5 CERTIFICATION.

5 7 1. Each manufacturer shall submit a written certification
5 8 to the department attesting to all of the following:

5 9 a. Each cigarette listed in the certification has been
5 10 tested in accordance with section 101B.4.

5 11 b. Each cigarette listed in the certification meets the
5 12 performance standard pursuant to section 101B.4.

5 13 2. Each cigarette listed in the certification shall be
5 14 described with the following information:

5 15 a. The brand or trade name on the package.

5 16 b. The style of cigarette.

5 17 c. The length of the cigarette in millimeters.

5 18 d. The circumference of the cigarette in millimeters.

5 19 e. The flavor of the cigarette, if applicable.

5 20 f. Whether the cigarette is filtered or nonfiltered.

5 21 g. The type of cigarette package.

5 22 h. The marking approved in accordance with section 101B.7.

5 23 i. The name, address, and telephone number of the
5 24 laboratory, if different than the manufacturer, that conducted
5 25 the test.

5 26 j. The date the testing was performed.

5 27 3. Each cigarette certified under this section shall be
5 28 recertified every three years.

5 29 4. The manufacturer shall, upon request, make a copy of
5 30 the written certification available to the office of the
5 31 attorney general and the department of revenue for purposes of
5 32 ensuring compliance with this chapter.

5 33 5. For each cigarette listed in a certification, a
5 34 manufacturer shall pay a fee of two hundred fifty dollars to
5 35 the department.

6 1 Sec. 6. NEW SECTION. 101B.6 NOTIFICATION OF
6 2 CERTIFICATION.

6 3 1. A manufacturer certifying cigarettes in accordance with
6 4 section 101B.5 shall provide a copy of the certification to
6 5 all wholesalers and agents to whom the manufacturer sells
6 6 cigarettes, and shall also provide sufficient copies of an
6 7 illustration of the cigarette packaging marking used by the
6 8 manufacturer in accordance with section 101B.7 for each
6 9 retailer to whom the wholesalers or agents sell cigarettes.

6 10 2. A wholesaler or agent shall provide a copy of the
6 11 cigarette packaging markings received from a manufacturer to
6 12 all retailers to whom the wholesaler or agent sells
6 13 cigarettes. A wholesaler, agent, or retailer shall permit the
6 14 state fire marshal, department of revenue, or the office of
6 15 the attorney general to inspect markings of cigarette
6 16 packaging marked in accordance with section 101B.7.

6 17 Sec. 7. NEW SECTION. 101B.7 MARKING OF CIGARETTE
6 18 PACKAGING.

6 19 1. Cigarettes that have been certified by a manufacturer
6 20 in accordance with section 101B.5 shall be marked to indicate
6 21 compliance with the requirements of this chapter. The marking
6 22 shall be in eight point type or larger and consist of one of
6 23 the following:

6 24 a. Modification of the product's universal product code to
6 25 include a visible mark printed at or around the area of the
6 26 universal product code. The mark may consist of an
6 27 alphanumeric or symbolic character or characters permanently
6 28 stamped, engraved, embossed, or printed in conjunction with
6 29 the universal product code.

6 30 b. Any visible alphanumeric or symbolic character or
6 31 combination of alphanumeric or symbolic characters permanently
6 32 stamped, engraved, or embossed upon the cigarette package or
6 33 cellophane wrap.

6 34 c. Printed, stamped, engraved, or embossed text that
6 35 indicates that the cigarettes meet the standards of this
7 1 chapter.

7 2 2. A manufacturer shall use only one marking, and shall
7 3 apply the marking uniformly for all packages including but not
7 4 limited to packs, cartons, and cases and to brands marketed by
7 5 that manufacturer.

7 6 3. The manufacturer shall notify the department of the
7 7 marking selected.

7 8 4. Prior to the certification of any cigarette, a
7 9 manufacturer shall present its proposed marking to the
7 10 department for approval. Upon receipt of the request, the
7 11 department shall approve or disapprove the marking offered. A
7 12 marking in use and approved for the sale of cigarettes in the
7 13 state of New York shall be deemed approved. A proposed
7 14 marking shall be deemed approved if the department fails to
7 15 act within ten business days of receiving a request for
7 16 approval.

7 17 5. A manufacturer shall not modify its approved marking
7 18 until the modification has been approved by the department in
7 19 accordance with this section.

7 20 Sec. 8. NEW SECTION. 101B.8 PENALTIES == ENFORCEMENT.

7 21 1. A manufacturer, wholesaler, agent, or other person who
7 22 knowingly sells cigarettes at wholesale in violation of
7 23 section 101B.3 is subject to the following:

7 24 a. For a first offense, a civil penalty not to exceed five
7 25 thousand dollars for each sale of the cigarettes.

7 26 b. For each subsequent offense, a civil penalty not to
7 27 exceed ten thousand dollars for each sale of the cigarettes,
7 28 provided that the total penalty assessed against any such
7 29 person shall not exceed fifty thousand dollars in any
7 30 thirty-day period.

7 31 2. A retailer who knowingly sells cigarettes in violation
7 32 of section 101B.3, is subject to the following:

7 33 a. For a first offense, a civil penalty not to exceed five
7 34 hundred dollars for each sale or offer for sale of the
7 35 cigarettes, and for each subsequent offense a civil penalty
8 1 not to exceed two thousand dollars for each sale or offer for
8 2 sale of the cigarettes, provided that the total number of
8 3 cigarettes sold or offered for sale in such sale does not
8 4 exceed one thousand cigarettes.

8 5 b. For a first offense, a civil penalty not to exceed one
8 6 thousand dollars for each sale or offer for sale of the
8 7 cigarettes, and for each subsequent offense a civil penalty
8 8 not to exceed five thousand dollars for each sale or offer for
8 9 sale of the cigarettes, provided that the total number of
8 10 cigarettes sold or offered for sale in such sale exceeds one
8 11 thousand cigarettes, and provided that the penalty against the
8 12 retailer does not exceed twenty-five thousand dollars in any
8 13 thirty-day period.

8 14 3. A manufacturer who fails to maintain test data or who
8 15 fails to send the test data to the department of public safety
8 16 or the office of the attorney general within sixty days of
8 17 receiving a written request pursuant to section 101B.4, is
8 18 subject to a civil penalty not to exceed ten thousand dollars
8 19 for each day beyond the sixtieth day that the manufacturer
8 20 fails to provide the test data.

8 21 4. In addition to any penalty prescribed by law, any
8 22 corporation, partnership, sole proprietorship, limited
8 23 partnership, or association engaged in the manufacture of
8 24 cigarettes that knowingly makes a false certification pursuant
8 25 to section 101B.5 is subject to the following:

8 26 a. For a first offense, a civil penalty of at least
8 27 twenty-five thousand dollars.

8 28 b. For a second or subsequent offense, a civil penalty not
8 29 to exceed one hundred thousand dollars for each false
8 30 certification.

8 31 5. Any person violating any other provision of this
8 32 chapter is subject to the following:

8 33 a. For a first offense, a civil penalty not to exceed one
8 34 thousand dollars.

8 35 b. For a second or subsequent offense, a civil penalty not
9 1 to exceed five thousand dollars for each violation.

9 2 6. Any cigarettes that have been sold or offered for sale
9 3 that do not comply with the performance standard required
9 4 pursuant to section 101B.4 shall be subject to forfeiture.
9 5 However, prior to the destruction of any cigarettes seized,
9 6 the holder of the trademark rights in the cigarette brand
9 7 shall be permitted to inspect the cigarettes.

9 8 7. In addition to any other remedy provided by law, the
9 9 department of public safety or the office of the attorney
9 10 general may file an action in district court for a violation
9 11 of this chapter, including petitioning for injunctive relief
9 12 or to recover any costs or damages suffered by the state
9 13 because of a violation of this chapter, including enforcement
9 14 costs relating to the specific violation and attorney fees.
9 15 Each violation of the chapter or of rules adopted under this
9 16 chapter constitutes a separate civil violation for which the

9 17 department of public safety or the office of the attorney
9 18 general may seek relief.

9 19 8. The department of revenue in the regular course of
9 20 conducting inspections of a wholesaler, agent, or retailer may
9 21 inspect cigarettes in the possession or control of the
9 22 wholesaler, agent, or retailer or on the premises of any
9 23 wholesaler, agent, or retailer to determine if the cigarettes
9 24 are marked as required pursuant to section 101B.7. If the
9 25 cigarettes are not marked as required, the department of
9 26 revenue shall notify the department of public safety.

9 27 9. To enforce the provisions of this chapter, the
9 28 department of public safety and the office of the attorney
9 29 general may examine the books, papers, invoices, and other
9 30 records of any person in possession, control, or occupancy of
9 31 any premises where cigarettes are placed, sold, or offered for
9 32 sale, including the stock of cigarettes on the premises.

9 33 Sec. 9. NEW SECTION. 101B.9 CIGARETTE FIRE SAFETY
9 34 STANDARD FUND.

9 35 A cigarette fire safety standard fund is created as a
10 1 special fund in the state treasury under the control of the
10 2 department of public safety. The fund shall consist of all
10 3 moneys recovered from the assessment of civil penalties or
10 4 certification fees under this chapter. The moneys in the fund
10 5 shall, in addition to any moneys made available for such
10 6 purpose, be available, subject to appropriation, to the
10 7 department of public safety for the purpose of fire safety and
10 8 prevention programs, including for entry level fire fighter
10 9 training, equipment, and operations.

10 10 Sec. 10. NEW SECTION. 101B.10 APPLICABILITY.

10 11 This chapter shall cease to be applicable if federal fire
10 12 safety standards for cigarettes that preempt this chapter are
10 13 enacted and take effect subsequent to July 1, 2008, and the
10 14 state fire marshal shall notify the secretary of state and the
10 15 Code editor if such federal fire safety standards for
10 16 cigarettes are enacted.

10 17 EXPLANATION

10 18 This bill relates to cigarette fire safety standards.
10 19 Beginning July 1, 2008, the bill prohibits cigarettes from
10 20 being sold or offered for sale in the state unless: (1) The
10 21 cigarettes have been tested in accordance with the test method
10 22 prescribed in the bill; (2) the cigarettes meet the
10 23 performance standard specified in the bill; and (3) a written
10 24 certification has been filed by the manufacturer with the
10 25 department of public safety in accordance with the bill. A
10 26 wholesaler or retailer who has inventory of cigarettes
10 27 existing prior to July 1, 2008, is not prohibited from selling
10 28 the cigarettes if the wholesaler or retailer affixed tax
10 29 stamps to the cigarettes on inventory pursuant to Code section
10 30 453A.10 before July 1, 2008, and the inventory of cigarettes
10 31 was purchased before July 1, 2008, in comparable quantity to
10 32 the amount of inventory of cigarettes purchased during the
10 33 same period of the prior year. A person may also sell or
10 34 offer for sale cigarettes that have not been certified by the
10 35 manufacturer in accordance with the chapter if the cigarettes
11 1 are or will be stamped for sale in another state or are
11 2 packaged for sale outside the United States.

11 3 The bill establishes a test method and performance standard
11 4 for cigarettes, requires maintenance on file of the test data
11 5 by the manufacturer for a period of three years, requires each
11 6 manufacturer to submit a written certification attesting to
11 7 certain details regarding the manufacturer's cigarettes,
11 8 requires a manufacturer certifying cigarettes to provide a
11 9 copy of any certification to all wholesalers and agents to
11 10 whom the manufacturer sells cigarettes and to provide
11 11 sufficient copies of an illustration of the cigarette
11 12 packaging marking used by the manufacturer for each retailer
11 13 to whom the wholesalers or agents sell cigarettes, requires a
11 14 wholesaler or agent to provide a copy of the cigarette
11 15 packaging markings received from a manufacturer to all
11 16 retailers to whom the wholesaler or agent sells cigarettes,
11 17 and requires that cigarettes certified by a manufacturer be
11 18 marked to indicate compliance with the requirements of the
11 19 bill.

11 20 The bill provides civil penalties for violations of the
11 21 bill and creates a cigarette fire safety standard fund as a
11 22 special fund in the state treasury. The fund consists of all
11 23 moneys recovered from the assessment of civil penalties
11 24 authorized under the bill and certification fees collected
11 25 pursuant to the bill and the moneys in the fund are to be made
11 26 available, subject to appropriation, to the department of
11 27 public safety for the purpose of fire safety and prevention

11 28 programs including for entry level fire fighter training,
11 29 equipment, and operations.

11 30 The bill directs the department of public safety to
11 31 administer the bill and provides that the provisions of the
11 32 bill cease to be applicable if federal fire safety standards
11 33 for cigarettes that preempt the bill are enacted and take
11 34 effect subsequent to July 1, 2008, and the department of
11 35 public safety is directed to notify the secretary of state and
12 1 the Code editor if such federal fire safety standards for
12 2 cigarettes are enacted.
12 3 LSB 1646YC 82
12 4 pf:nh/je/5